

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

LADON SMITH,

Petitioner,

: Case No. 1:17-cv-570

- vs -

District Judge Michael R. Barrett  
Magistrate Judge Michael R. Merz

WARDEN,

Chillicothe Correctional Institution

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Respondent.

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**REPORT AND RECOMMENDATIONS ON MOTION FOR  
RECONSIDERATION**

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This habeas corpus is before the Court on Petitioner's Motion under Fed. R. Civ. P. 60(b)(1) for reconsideration (ECF No. 16). Smith seeks reconsideration of the Court's Order of July 27, 2018 (ECF No. 15), adopting the Magistrate Judge's recommendation that Petitioner's Rule 11 motion be denied (ECF No. 12).

The Magistrate Judge has filed two Reports and Recommendations ("R&R") since the case was transferred to him on July 6, 2018. In the first R&R the Magistrate Judge recommended denying Petitioner's Motion for Sanctions (ECF No. 8). In that first R&R, Petitioner was notified that any objections would be due seventeen days after service (See ECF No. 12, PageID 713. Under Fed. R. Civ. P. 5, service of that R&R was complete upon mailing on July 9, 2018, making the deadline for objections July 26, 2018. Then on July 13, 2018, the Magistrate Judge filed an R&R on the merits (ECF No. 13).

On July 23, 2018, Smith mailed a set of Objections (ECF No. 14) which were received by the Clerk on July 26, 2018 (ECF No. 14). Under the “mailbox” rule of *Houston v. Lack*, 487 U.S. 266 (1988), Smith is entitled to have those Objections deemed filed on July 23, 2018. Thus the Objections would be timely for both the first and second R&R.

However, the Objections do not object in any way to the first R&R about Rule 11 sanctions. Instead, they say in their very caption that they are objections to the second R&R, referred to as the one filed July 13, 2018 (See ECF No. 14, PageID 730). The first R&R addresses only the Rule 11 question and was adopted because Smith made no objections to that particular R&R. The Order adopting the first R&R speaks only of denying Smith’s Motion for Sanctions and says nothing about the merits.

On the other hand, the Objections actually filed are directed to the merits and were timely filed. They are pending for consideration by District Judge Barrett in the ordinary course of the Court’s business.

The Motion for Reconsideration should therefore be DENIED.

August 9, 2018.

s/ *Michael R. Merz*  
United States Magistrate Judge

### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections.

If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).